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April 16, 2008

FCC Secretary Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

RE: **Notice of Written *Ex Parte*** - Copies filed in the Proceedings Captioned in the Matters of:

Petition of AT&T, Inc. For Forbearance under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Cost Assignment Rules,
WC Docket 07-21;

Petition of BellSouth Telecommunications, Inc. For Forbearance under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Cost Assignment Rules, **WC Docket 05-342;** and,

Jurisdictional Separations and Referral to the Federal-State Joint Board,
CC Docket No. 80-286.

Dear Ms. Salas:

Today, I forwarded via e-mail copies of the attached letter from the five Commissioners of the Public Utility Commission of Ohio to all five FCC Commissioners, their legal assistants, and Wireline Competition Bureau Chief Dana Shaffer. The letter urges them to reject the AT&T petition filed in the above captioned proceeding. These e-mails were made today. This letter is being filed to comply with the FCC's rules on *ex parte* contacts.

Sincerely,

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**Attorney for the Ohio Public Utilities
Commission of Ohio**



The Public Utilities Commission of Ohio

Monitoring marketplaces and enforcing rules to assure safe, adequate, and reliable utility services.

Ted Strickland, Governor
Alan R. Schriber, Chairman

Commissioners

Ronda Hartman Fergus
Valerie A. Lemmie
Paul A. Centolella
Cheryl Roberto

April 16, 2008

Chairman Kevin Martin
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Deborah Tate
Commissioner Robert McDowell

Federal Communications Commission (via electronic delivery)

RE: Ex Parte Communication, *In the Matter of the Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket 07-21

Dear Chairman Martin and Commissioners:

On January 25, 2007, AT&T on behalf of itself and its affiliates filed a lengthy forbearance petition, requesting that the FCC forbear from enforcing a number of the FCC's cost assignment and accounting rules. Since then, a number of other companies have filed similar petitions. Since that time, a number of parties, including the Public Utilities Commission of Ohio, have filed comments and reply comments advocating that AT&T's petition, and its kindred, be denied. As the deadline for a decision on the AT&T petition draws near, the Public Utilities Commission of Ohio feels that it is important to reiterate our earlier position, and provide some additional clarity with regard to the issues at hand.

As was noted in our Reply Comments in this docket, AT&T has proposed that the FCC should forbear because the rules involved "were developed to support a rate of return regulatory regime which no longer exists..." Even if this were entirely true, it does not meet the criteria for forbearance. Under 47 USC 160, forbearance requires that the FCC determine that the regulations:

- Are no longer "...necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;"
- Are no longer "...necessary for the protection of consumers; and" (Emphasis added)
- Forbearance is itself in the public interest.

The use of “and” clearly indicates that all three of these criteria must be met. Even assuming that the first two are fulfilled (an assumption we discuss below), there needs to be a definable public interest in forbearance. With regard to this, AT&T’s petition only asserts that public interest would be served by allowing AT&T to save the money spent on regulatory compliance “...so that AT&T may redirect these funds to useful purposes, like product innovation and service quality.”¹ This is not a commitment to spend money on product innovation and service quality, simply an assertion that they might if they were allowed to stop keeping the accounting records. As assertions of public interest go, this is on the level of “It’ll be good, trust us.”

These accounting rules are not about trust. As AT&T itself notes in its petition, these rules are about “preventing any leveraging of market power on unregulated markets”.² Preventing the leveraging of market power is very much still in the public interest. The FCC has found as recently as 2001 that market forces have not been enough to ensure fair pricing for switched access, whether originating or terminating.³

Even more strikingly, the forbearance petition, if granted, will effectively remove the very non-structural safeguards implemented less than a year ago in the 272 *Sunset* order.⁴ Those safeguards were instituted based on the conclusion that AT&T (and the other RBOCs) still had market power over bottleneck facilities.⁵ There is no indication that the situation has changed dramatically in a few months. To say that the public interest is promoted by removing needed safeguards is disingenuous, at best.

As to the first two criteria, AT&T has long taken the position that the data captured by these accounting requirements is no longer needed in a market environment where rate of return regulation has been replaced by market forces and price caps. While it may no longer be required for AT&T to file a retail rate proceeding to determine a retail revenue requirement, the data is still essential.

It would be one thing if the forbearance petition only covered the reporting of data in ARMIS. The rules AT&T are seeking forbearance from cover collecting and retaining the data. In short, AT&T wants to be exempted from even retaining the data, or maintaining

¹ In the Matter of the Petition of AT&T Inc. For Forbearance Under 47 U.S.C. 8 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules, Petition of AT&T for Forbearance, WC Docket 07-21, Filed January 21, 2007, at Page 4

² *Id* at Footnote 8

³ Access Reform, Seventh Report and Order, 16 FCC Rcd 9923,9935 (2001)

⁴ Federal Communications Commission, IN THE MATTERS OF SECTION 272(F)(1) SUNSET OF THE BOC SEPARATE AFFILIATE AND RELATED REQUIREMENTS, WC 02-112, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd. 16,440 (2007)

⁵ *Id* at ¶70 and ¶98

accounting systems that would collect it. This would make a number of current regulatory tasks impossible.

Under 252(d)(3) of the Act, and as required in Ohio by 4901:1-7-17(E)(3) O.A.C, State Commissions are still responsible for determining wholesale rates to be used by Resellers (i.e. in determining the calculation of the avoided retail cost). While resellers are fewer in number, many still purchase from resale (avoided cost pricing) agreements with the ILECs.

Under the Ohio Administrative Code, there are requirements for affiliate transactions and record keeping, contained within 4901:1-6-09(E) O.A.C., to protect against anticompetitive behavior and cross-subsidization of regulated and unregulated markets. The Forbearance Petition, if granted, would remove the very data that is required to determine whether AT&T is actually abiding by these rules.

Finally, under Ohio Revised Code 4905.33(B) “No public utility shall furnish free service or service for less than actual cost for the purpose of destroying competition.” If the forbearance petition were granted, it would be difficult (if even possible) to identify when a service was being offered “...for less than actual cost”. Thus, any assertion that this data is no longer necessary for the determination of just and reasonable rates and the protection of consumers is patently incorrect.

As a final matter, with both Universal Service Fund and Intercarrier Compensation reform on the table, this is not the time to forbear from collecting detailed data. The Ohio Commission made this point in our Reply Comments on the Petition, and it is as true today as it was a year and a half ago.

For the reasons noted above, among others, AT&T has failed to show that the petition meets the statutory requirements for approval. The petition must, therefore, be denied.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan R. Schriber', with a stylized flourish at the end.

Alan R. Schriber
Chairman